

**SAUL A. GUZMAN**

**V.**

**CILLESSEN & SONS, INC.**

and

**EMCASCO INSURANCE COMPANY**

Docket No. 1,064,196

<sup>2</sup> K.S.A. 2011 Supp. 44-508(e) and K.S.A. 2011 Supp. 44-508(f)(2)(A)(ii) and (iii).

does not explain his conclusion. On the other hand, Dr. Fluter did his IME at the Claimant's request and it was done over four years after the alleged accident.

The Claimant's Preliminary Hearing requests are taken under advisement pending an IME which is being ordered by separate order. The parties may schedule further hearings with the Court, if they deem it necessary, after the IME report is received.<sup>3</sup>

Respondent requests review of these issues:

1. Whether claimant sustained personal injury arising out of and in the course of his employment through repetitive trauma?

2. Whether claimant's work activity was the prevailing factor causing his medical condition and need for treatment?

The second Order formally appointed Dr. Pat Do to perform the neutral medical evaluation (IME), and requested the doctor address, *inter alia*, whether claimant's alleged accident or repetitive trauma was the prevailing factor in causing claimant's injury, need for treatment and resulting disability or impairment, if any.

### **ANALYSIS AND CONCLUSIONS**

The Board does not have jurisdiction to review all ALJ decisions. Among the decisions the Board can review are preliminary hearing Orders, but only under the specific circumstances detailed in K.S.A. 2011 Supp. 44-534a(a)(2) and K.S.A. 2011 Supp. 44-551(i)(2)(A).

In this claim, the ALJ made no findings on claimant's requests for preliminary relief or on respondent's defenses. The ALJ, by separate Order which is not before the Board, appointed a neutral physician, as he had the authority to do pursuant to K.S.A. 2011 Supp. 44-516.<sup>4</sup> All other issues were specifically taken under advisement. Hence, the ALJ made no findings the Board has jurisdiction to review and the application for Board review must accordingly be dismissed for lack of jurisdiction.

### **DECISION**

**WHEREFORE**, respondent's application for review is dismissed for lack of jurisdiction.

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<sup>3</sup> ALJ Order (July 15, 2016) at 2.

<sup>4</sup> See, e.g., *Myers v. Four B Corporation*, No. 1,043,611, 2009 WL 3710748 (Kan. WCAB October 28, 2009).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2016.

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HONORABLE GARY R. TERRILL  
BOARD MEMBER

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Honorable Gary K. Jones, Administrative Law Judge